Supreme Court, U. S.
FILED
DEC 6 1979
MICHAEL RODAK, JR., CLERK

No. 79-856

In the Supreme Court of the United States

OCTOBER TERM, 1979

SENATOR BARRY GOLDWATER, ET AL., PETITIONERS

v.

JAMES EARL CARTER, PRESIDENT OF THE UNITED STATES, AND CYRUS VANCE, SECRETARY OF STATE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-106a) is not yet reported. The opinions and orders of the district court (Pet. App. 107a-152a) are not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on November 30, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the President has the constitutional authority to exercise the United States' treaty right to terminate the Mutual Defense Treaty with the Republic of China as part of the process of transferring diplomatic recognition to the People's Republic of China.

2. Whether individual Senators and Representatives, without institutional support for their position, have standing to challenge the validity of the President's termination of the Treaty.

3. Whether petitioners' challenge to the President's termination of the Treaty presents a nonjusticiable political question.

STATEMENT

In December 1978, President Carter announced that, effective January 1, 1979, diplomatic recognition would be transferred from the Republic of China to the People's Republic of China (PRC) as the sole legal government of China. In connection with this transfer of recognition, the President gave notice, pursuant to the termination clause of the Mutual Defense Treaty of 1954 between the United States and the Republic of China, 6 U.S.T. 433, T.I.A.S. No. 3178, that the Treaty would terminate effective January 1, 1980. Petitioners, individual Senators and Representatives, challenge the constitutional validity of the President's termination action.

1. In 1949 the Chinese civil war drove the government of the Republic of China from the mainland to Taiwan. The United States continued to recognize that government as the sole legal government of China and did not enter into any diplomatic relationship with the PRC. Following the Korean War, the United States and the Republic of China concluded the Mutual Defense Treaty of 1954.[1] This Treaty, which was primarily directed against the perceived threat from the PRC, provided that in case of attack on Taiwan, the Pescadores, or United States territories in the Western Pacific, each nation "would act to meet the common danger in accordance with its constitutional processes" (Pet. App. 155a). Article X of the Treaty provided that it would remain in force "indefinitely" but that "[e]ither Party may terminate it one year after notice has been given to the other Party" (*id.* at 156a).

Since 1949 both the PRC and the Republic of China have claimed to be the sole legitimate government of all of China (including Taiwan). In the last 25 years, more than 100 nations, including all of our NATO and ANZUS allies and Japan, have recognized the PRC and broken diplomatic relations with the Republic of China (Pet. App. 5a).

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[1] The Treaty was signed on December 2, 1954. After ratification by the President with the advice and consent of the Senate, the Treaty became effective on March 3, 1955 (Pet. App. 4a).

In the early 1970's, the United States began to pursue closer relations with the PRC. An important manifestation of this policy was President Nixon's 1972 visit to the Chinese mainland. In connection with that visit, the United States and the PRC released the "Shanghai Communique," which declared the goal of "normalization of relations between China and the United States." The PRC stipulated that a prerequisite for full mutual diplomatic relations was an agreement by the United States to cease all official relations with the Republic of China, to withdraw United States military units from Taiwan, and to terminate the Mutual Defense Treaty (Pet. App. 5a).

On December 15, 1978, the United States and the PRC announced their agreement to establish formal diplomatic relations as of January 1, 1979. President Carter announced that recognition would simultaneously be withdrawn from the Republic of China and that the government on Taiwan would be notified that "the Mutual Defense Treaty is being terminated in accordance with the provisions of the Treaty." On December 23, 1978, the Department of State formally notified the Republic of China that the Treaty would terminate as of January 1, 1980 (Pet. App. 6a). Although all official diplomatic ties with the Republic of China have been severed, the United States has sought to preserve "extensive, close, and friendly commercial, cultural and other relations between the people of the United States and the people of Taiwan." Taiwan Relations Act, Pub. L. No. 96-8, 93 Stat. 14, reprinted in Pet. App. 158a-165a.

A normalized political relationship with the PRC is of great significance to the United States' strategic interests in achieving a careful balance of relationships in Asia and the world and in easing tensions between the PRC and United States allies in East Asia. As a consequence of the transfer of recognition, the PRC and the United States have established embassies in each other's territory. The two countries have reached an agreement settling long-outstanding property claims of American nationals against China. In addition, they have recently signed a trade agreement which, if approved by Congress under the Trade Act of 1974, will open a major new market for American industry and agriculture. The PRC and the United States have also concluded cooperation agreements in several fields, including hydroelectric power, science and technology, cultural affairs, and education; important new cooperative arrangements, including a consular treaty and aviation and shipping agreements, are under negotiation. Premier Hua Guofeng is scheduled to visit the United States early next year, and President Carter has accepted an invitation to travel to China after the Premier's visit. Declaration of Warren Christopher ¶ 5 (Feb. 23, 1979); Declaration of Warren Christopher ¶ 4 (Oct. 18, 1979).[2]

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[2] The October 18, 1979 Christopher Declaration was filed by respondents in the court of appeals in support of the motion for expedited treatment and suggestion for *en banc* hearing. The Declaration primarily represents an updating of the ma-

2. On December 22, 1978, the day before the United States' notice of termination was formally communicated to the Republic of China, petitioners filed this suit in the United States District Court for the District of Columbia. They sought a declaration that any action by the President to terminate the Treaty without senatorial or congressional approval would be constitutionally ineffective. They also sought an injunction against any future actions by the President that would "have the effect of terminating, or creating any expectations that the Defense Treaty has been or will be terminated" (J.A. 21).[3] On June 6, 1979, the district court dismissed the suit, without prejudice, for lack of standing. The court reasoned that, because neither the Senate nor the Congress as a whole had utilized the legislative process to assert its power to participate in the decision on terminating the Treaty, petitioners could not demonstrate the injury in fact necessary to support their lawsuit (Pet. App. 141a-152a).

Later the same day, the Senate voted to replace the language in a pending resolution with a substitute expressing the sense of the Senate that termination of mutual defense treaties requires Senate approval. Although no final action was ever taken on this resolution, the district court construed the Senate vote as sufficiently demonstrative of congressional will to establish standing. Accordingly, the court granted petitioners' motion for reconsideration (Pet. App. 112a-120a). The court then concluded that petitioner's complaint presented a justiciable question (*id.* at 120a-125a) and that the Constitution requires formal action by both the President and Congress as a precondition of treaty termination. The court stated that the requirement of congressional participation could be satisfied by obtaining the approval of either two-thirds of the Senate or a majority of both Houses of Congress (*id.* at 125a-140a). The court entered a judgment declaring that the President's notice of termination of the Treaty was ineffective and enjoining the Secretary of State "and his subordinate officers * * * from taking any action to implement the President's notice of termination unless and until that notice is approved as herein declared" (*id.* at 108a).

3. The court of appeals, sitting *en banc*, reversed. The majority held that "in these precise circumstances" the President, on behalf of the United States, is empowered to terminate the Treaty in accordance with its terms (Pet. App. 4a). The court stressed (*id.* at 14a-15a) that its decision was based on various considerations, none of which was necessarily dispositive. On the contrary, the court stated (*id.* at 15a) that "[t]he result we reach draws upon their totality, but in listing them hereinafter we neither assign them hierarchical values nor imply that any one factor or combination of factors is determinative." Chief Judge Wright and Judge Tamm

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terial contained in Deputy Secretary Christopher's earlier affidavit filed in the district court.

We have reproduced both Christopher Declarations as an appendix, *infra*.

[3] "J.A." refers to the joint appendix in the court of appeals.

concurred in the result on the ground that petitioners lacked standing to maintain this action. Judge MacKinnon agreed with the majority's determination that petitioners had standing to sue, but he dissented on the merits.

ARGUMENT

1. The court of appeals' decision is correct and further review is not warranted. The court of appeals repeatedly emphasized that its holding concerned only the validity of the President's termination of the Mutual Defense Treaty of 1954, in accordane with the terms of that Treaty, in conjunction with the President's exercise of his unquestioned unilateral power to transfer diplomatic recognition from the Republic of China to the PRC. The court stated (Pet. App. 26a), in words that could hardly be more explicit: "All we decide today is that two-thirds Senate consent or majority consent in both houses [of Congress] is not necessary to terminate this treaty in the circumstances before us now." The court carefully avoided the adoption of any sweeping rule governing the termination of all treaties at all times and in all circumstances.

To be sure, the President argued in the court of appeals (and he repeats the contention in this Court (see pages 15-23, *infra*)) that, as a consequence of his executive power to conduct the foreign affairs of the United States, the President has broad constitutional authority to terminate the Nation's treaty obligations, without seeking formal approval or acquiescence from Congress. But the court of appeals decided

only the case before it. Notwithstanding petitioners' assertions to the contrary (Pet. 11-13), review by this Court cannot be justified on the ground that the court below has finally settled an important constitutional question whose significance extends far beyond the confines of this dispute.

2. The severe time constraints under which the Court would inevitably labor in seeking to render an effective decision on the merits of the current controversy provide an additional important reason why petitioners' request for further review should be denied. The notice of termination of the Mutual Defense Treaty was given to the Republic of China in December 1978. It remains outstanding. Unless the notice is withdrawn before January 1, 1980, the Treaty will terminate on that date. Assuming *arguendo* that injunctive relief is available against the President ordering him to withdraw a notice already given, such relief would be effective in this case only if granted before January 1, 1980. Otherwise, the Treaty will terminate on that date and, under international law, that termination will be irrevocable, regardless of any subsequent judicial holding that the United States' internal procedures for arriving at the decision to terminate were deficient. See V G. Hackworth, *Digest of International Law* 328 (1943).

If the Court were to rule for petitioners on the merits after January 1, 1980, the only meaningful relief that could be given would presumably be an order reinstating the Treaty until such time as the

Senate or Congress could express its views on the termination decision. But not even petitioners suggest that it is within the judicial power to order a terminated mutual defense treaty back into effect while Congress considers whether it agrees with the termination. Accordingly, even apart from the serious international consequences that can be expected to ensue if this dispute is not finally resolved by January 1 (see App., *infra*), a decision by that date is essential if the case is not to become moot by virtue of the Court's inability to provide an effective remedy after termination.

Having said all this, we turn to an abbreviated discussion of the merits of the controversy. We also elaborate briefly on the reasons why we continue to assert that petitioners lack standing to pursue this litigation and that the case presents a non-justiciable political question.[4]

3.a. As the court of appeals correctly recognized (Pet. App. 27a-29a), one important ingredient in the justification for the President's termination of the Mutual Defense Treaty is that it occurred in the context of a transfer of diplomatic recognition from one government of China to another. Article II, Section 3 of the Constitution provides that the President

[4] Because these latter two points concern the Court's jurisdiction they may appropriately be raised without the filing of a separate petition for a writ of certiorari on behalf of respondents, even though if accepted they would result in a judgment vacating the district court's order and dismissing the complaint rather than an affirmance of the court of appeals' judgment.

"shall receive Ambassadors and other public Ministers." This language has been construed to vest in the President alone the power to confer or withhold diplomatic recognition of foreign states and governments. *Guaranty Trust Co.* v. *United States*, 304 U.S. 126, 137-138 (1938); *United States* v. *Pink*, 315 U.S. 203, 229 (1942); *Banco Nacional De Cuba* v. *Sabbatino*, 376 U.S. 398, 410 (1964). The recognition power includes the power to remove obstacles to full recognition, *United States* v. *Belmont*, 301 U.S. 324, 330 (1937), and "the power to determine the policy which is to govern the question of recognition." *United States* v. *Pink*, *supra*, 315 U.S. at 229.

Confronted by the competing claims of two governments, each of which purported to rule all of China including Taiwan, the President determined, in December 1978, that recognition should be transferred from the Republic of China to the PRC. The President's decision to terminate the Mutual Defense Treaty with the Republic of China was solely a consequence of his political decision to transfer recognition. No act of the Senate or the Congress can reverse the President's determination that our former treaty partner is no longer a government with which the United States will maintain formal foreign relations[5] and that it has been replaced by the PRC as the lawful government of the one China.

[5] Contrary to petitioners' assertions, the Taiwan Relations Act does not constitute a *de facto* recognition of the Republic of China. The Act emphasizes that there will be *unofficial relations* with the *people* of Taiwan. In any event, the recog-

As the district court acknowledged (Pet. App. 127a-128a n.46) and petitioners conceded in the court of appeals, there unquestionably are some situations in which the President has the constitutional responsibility to determine whether our Nation's treaties remain effective. See *Clark* v. *Allen*, 331 U.S. 503 (1947); *Charlton* v. *Kelly*, 229 U.S. 447 (1913); *Terlinden* v. *Ames*, 184 U.S. 270 (1902) (President must determine whether circumstances have arisen that render treaty terminable or inoperable under international law); S. Rep. No. 119, 96th Cong., 1st Sess. 10 (1979), reprinted in Pet. App. 23a-25a n.19. Similarly, it is the President who must determine whether the United States can maintain a defense treaty with a defunct government or a non-recognized regime. Once it is recognized that the President, acting alone, can terminate at least some treaties, then the court of appeals' observation concerning the proper role of the judiciary in identifying which treaties fall within that class becomes especially pertinent. The court stated (Pet. App. 26a):

> History shows us that there are too many variables to lay down any hard and fast constitutional rules.
>
> * * * There is no judicially ascertainable and manageable method of making any distinction among treaties on the basis of their substance, the magnitude of the risk involved, the degree of

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nition power is vested in the President alone, and his explicit determination may not be impliedly overriden by a legislative act.

> controversy which their termination would engender, or by any other standards. We know of no standards to apply in making such distinctions.

In light of the close relationship in this case between the treaty termination and the transfer of diplomatic recognition, the court of appeals properly concluded that the President did not exceed his powers in giving the December 1978 notice of termination without first obtaining formal congressional consent.

The court of appeals' decision in this regard is substantially bolstered by the explicit termination clause included in Article X of the Treaty. That provision created a treaty right on behalf of the United States. Termination of a treaty is an international act, and only the President or his subordinates in the Executive Branch may act for the United States internationally. *See, e.g., United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 319-329 (1936). Under Article II of the Constitution, the President is entrusted with the duty of faithfully executing the laws (Section 3) and is vested with the full "executive Power" of the United States (Section 1). In the absence of some indication to the contrary, the natural inference is that he may exercise any treaty right of the United States, including termination, without returning to the Senate for specific instructions. See *Restatement (Second) of the Foreign Relations Law of the United States* § 163 (1965).

There is no evidence in this case that Congress intended any different practice, nor has the Congress

or the Senate at any time since 1955 purported to take any definitive action with respect to termination of this particular Treaty (Pet. App. 29a-30a). Indeed, in the Taiwan Relations Act, Congress included provisions intended to ensure Taiwan's security, precisely because the President had terminated the Mutual Defense Treaty.[6] Section 4(c) of the Act, which approves President Carter's memorandum of December 30, 1978, continuing in effect all treaties and agreements with Taiwan, clearly applies to all treaties and agreements other than the Defense Treaty. The House committee report on the bill takes note of the President's December 1978 notice of termination of the Defense Treaty and then states that Section 4(c) of the Act "is intended to confirm as a matter of U.S. law the President's statement of December 30, 1978, that all *other* treaties and agreements then in force shall continue in force." H.R. Rep. No. 96-26, 96th Cong., 1st Sess. 11 (1979) (emphasis added).

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[6] During recent legislative debates on S. Res. 15, the resolution introduced by Senator Harry Byrd, Jr., concerning the termination of mutual defense treaties, Senator Frank Church, Chairman of the Senate Foreign Relations Committee, stated: "Another indication that the President's action terminating the treaty with Taiwan was not being directly challenged by Congress was the action by both the Senate and the House of Representatives in writing security provisions into the Taiwan Relations Act. Surely we would not have done this if we had not concluded that it was necessary owing to the President's action in giving notice of the treaty's termination to Taiwan. * * * Indeed, if the Congress had considered the President's action to be constitutionally invalid, there would have been no reason whatever to pass the Taiwan Relations Act." 125 Cong. Rec. S16688 (daily ed. Nov. 15, 1979).

Moreover, even if one assumes that Section 4(c) of the Act does apply to the Mutual Defense Treaty, the Section provides only that treaties with the Republic of China are continued in force "unless and until terminated in accordance with law" (Pet. App. 160a). The President's action challenged here effected just such a termination.

Finally, in considering the proper procedure for terminating the Mutual Defense Treaty, it bears repeating that this Treaty directly implicates the Presidents' power as Commander-in-Chief. Like other defense treaties, the Mutual Defense Treaty was not intended to have, and in fact did not have, any effect on United States domestic law. Article V—the heart of the Mutual Defense Treaty (Pet. App. 155a)—is a political-military contract that remains wholly executory. *See Foster* v. *Neilson*, 27 U.S. (2 Pet.) 253 (1829). It is not amenable to enforcement in the courts; it establishes no rules of decision; it confers no judicially enforceable rights. The President is empowered to terminate the Treaty because only he is empowered to implement it through the exercise of his discretionary authority as Commander-in-Chief. It is beyond dispute that a court could not issue an order compelling the President to send troops to defend Taiwan against attack. See, *e.g.*, *Johnson* v. *Eisentrager*, 339 U.S. 763, 789 (1950).

b. In any event, even if the present controversy is viewed apart from the special characteristics of the Mutual Defense Treaty, the structure of the Constitution and its allocation of power to the President in the area of foreign affairs confirm in more general

terms the correctness of the court of appeals' decision.

Article II vests the "executive Power" of the United States in the President. It elaborates on the specific components of that power and the specific limitations upon their exercise. Among the powers specifically listed and limited is the treaty-making power. U.S. Const., Art. II, Sec. 2. The President's role with respect to treaties is paramount; he negotiates them, signs them, submits them to the Senate for advice and consent, and finally determines whether to ratify them. The President, not the Congress, determines whether the treaty is in effect in international law (*Charlton* v. *Kelly, supra*, 229 U.S. at 471-476; *Terlinden* v. *Ames, supra*, 184 U.S. at 287-288) and the President, not the Congress, interprets the treaty. Cf. *Fourteen Diamond Rings* v. *United States*, 183 U.S. 176, 179-180 (1901). See generally L. Henkin, *Foreign Affairs and the Constitution* 130, 136 (1972).

Moreover, as the court of appeals observed (Pet. App. 19a), most federal powers arise out of specific grants of authority delegated by the states, but the foreign affairs powers of the national government are different. They proceed directly from the sovereignty of the Nation, as this Court recognized in *United States* v. *Curtiss-Wright Export Corp., supra*, 299 U.S. at 318. Even if the Constitution had said nothing about foreign affairs, the powers relevant to the conduct of relationships with foreign nations would have vested in the federal government and, more particularly, in the President, as part of his general executive authority.

In contrast to the broad grant of general executive power to the President, Congress' power is limited to the "legislative Powers herein granted." U.S. Const., Art. 1, Sec. 1. Nothing in the Constitution prescribes any congressional role in treaty termination. The Senate's power to advise and consent to treaties is a specifically defined limitation on the President's broad powers under Article II; there is no constitutional basis for expanding that limitation to situations not enumerated by the Constitution. In the court of appeals' words (Pet. App. 20a), "[i]t would take an unprecedented feat of judicial construction to read into the Constitution an absolute condition precedent of congressional or Senate approval for termination of all treaties, similar to the specific one relating to initial approval."

This Court has reached a similar conclusion in interpreting the virtually identical language of the appointments clause in Article II. *Myers* v. *United States*, 272 U.S. 52, 118 (1926), held that

> [t]he requirement of the second section of Article II that the Senate should advise and consent to the Presidential appointments, was to be strictly construed. The words of section 2, following the general grant of executive power under section 1, were either an enumeration and emphasis of specific functions of the Executive, not all inclusive, or were limitations upon the general grant of the executive power, and as such, being limitations, should not be enlarged beyond the words

> used. Madison, 1 Annals, 462, 463, 464. The executive power was given in general terms, strengthened by specific terms where emphasis was regarded as appropriate, and was limited by direct expressions where limitation was needed, and the fact that no express limit was placed on the power of removal by the Executive was convincing indication that none was intended.

See also 272 U.S. at 128.

The lack of any discussion whatever concerning treaty termination at the Constitutional Convention, and the absence of any constitutional provision imposing specific conditions on Presidential authority regarding treaty termination, are hardly surprising. While there were sound reasons for the Framers to provide a check on the President's ability to entangle the United States in a foreign alliance,

> "disentangling" is less risky and may have to be done quickly, and is often done piecemeal, or *ad hoc*, by various means or acts.

Henkin, *supra*, at 169. The President may need to extricate the United States from a treaty quickly because of breach by the other party, the outbreak of hostilities, or other changed international circumstances; it may be necessary for the President to hold out the possibility of treaty termination as a response to threatened action or actual conduct by a treaty partner. Moreover, the question whether a particular treaty should remain in effect often requires factual judgments that can be made only by the Executive

(such as whether a treaty has been rendered inoperative, obsolete, ineffectual, or impossible to perform or whether a treaty obligation has been fulfilled). The power to terminate in such circumstances is a necessary concomitant of the President's power to exercise fully his constitutional authority to conduct the nation's foreign affairs. *United States* v. *Curtiss-Wright*, *supra*.[7]

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[7] For these reasons, virtually all of the scholars who had addressed the issue prior to the President's termination action in this case supported the President's power to act alone. For example, Professor Henkin wrote in 1972 that the Senate does not have "any authoritative voice in interpreting a treaty or in terminating it." Henkin, *supra*, at 136. Professor Tribe wrote in 1978 that the President "has exclusive responsibility for * * * terminating treaties or executive agreements * * *." L. Tribe, *American Constitutional Law* 164-165 (1978). These views are consistent with those of Alexander Hamilton, who stated:

> [T]reaties can only be made by the president and senate jointly, but their activity may be continued or suspended by the president alone.

Letters of Pacificus and Helvidius on the Proclamation of Neutrality of 1793, at 13 (Gideon, Washington 1845), reprinted in *Treaty Termination: Hearings on S. Res. 15 Before the Senate Comm. on Foreign Relations*, 96th Cong., 1st Sess. 153 (1979) [hereinafter *Treaty Termination Hearings*].

Since the President's termination action in December 1978, there has been a greater diversity of views. However, the majority of those who testified at the Senate Foreign Relations Committee's Treaty Termination Hearings strongly supported the President's power. See testimony of Herbert Brownell, Attorney General at the time the Mutual Defense Treaty was concluded (*id.* at 336-337); testimony of Abram Chayes, Felix Frankfurter Professor of Law at the Harvard Law School and former Legal Adviser of the Department of

The logic of the constitutional arrangement is compelling. Just as the Senate or Congress cannot bind the United States to a treaty without the President's active participation and approval, they cannot continue a treaty commitment that the President has determined is contrary to the security or diplomatic interests of the United States and is terminable under international law. The Senate or Congress cannot undertake, or revive or continue, a treaty obligation of the United States over the President's objection. That is the constitutional scheme.

Petitioners' reliance on Article VI of the Constitution is inapposite. The fact that statutes and treaties are both part of "the supreme Law of the Land" does not establish that they must both be terminated in an identical manner. Statutes and treaties are not adopted in the same manner, and nothing in Article VI requires that they be terminated in the same way. Executive agreements and orders, as well as treaties that have been breached or rendered inoperable by changed circumstances, are also part of "the supreme Law of the Land," yet it is undisputed that they may be terminated by the Presi-

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State (*id.* at 306); testimony of Leonard C. Meeker, former Legal Adviser of the Department of State (*id.* at 319); testimony of William D. Rogers, former Assistant Secretary of State (*id.* at 286); testimony of John Norton Moore, Walter L. Brown, Professor of Law at University of Virginia School of Law (*id.* at 400, 404); testimony of Professor Andreas F. Lowenfeld of the New York University School of Law (*id.* at 443); testimony of Professor Dean Rusk, former Secretary of State (*id.* at 372-73).

dent alone. As the court of appeals observed (Pet. App. 16a-17a), Article VI, Clause 2, is intended to establish the supremacy of federal law over state law, not to define the proper constitutional procedure for termination.

Finally, the historical practice further supports the conclusion that the Constitution does not mandate a specific role for Congress in the termination of treaties. Of the 26 occasions on which the President has acted to terminate a treaty, 13 involved purely Presidential action without the participation of Congress. Several of the treaties in the latter group involved matters of considerable importance. See *Treaty Termination Hearings*, *supra*, at 157-191.[8]

When Congress has participated, that participation has taken diverse forms, negating any inference that

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[8] Petitioners' statement (Pet. 24-25) that 54 treaties have been terminated, but only two by the President alone, is incorrect. Petitioners count one statute that affected particular provisions in 25 treaties as 25 separate cases. Seamens' Act of 1915, ch. 153, 38 Stat. 1164. Petitioners also count statutes that by implication might be thought to authorize termination. But the cited statutes are not in any way inconsistent with the treaties said to have been terminated, and statutes may not supersede treaties by implication. *United States* v. *Payne*, 264 U.S. 446 (1924); *Cook* v. *United States*, 288 U.S. 102, 120 (1933); *Restatement (Second) of the Foreign Relations Law of the United States* § 145(1) at 446 (1965).

Petitioners also repeatedly contend (Pet. 11, 24) that no previous President of the United States has ever asserted the power to terminate a treaty alone. On the contrary, the record shows that the power has been asserted by Presidents Madison, McKinley, Wilson, Coolidge, Roosevelt, Eisenhower, Kennedy, and Johnson. Pet. App. 22a-25a, 126a-127a; *Treaty Termination Hearings*, *supra*, at 157-191.

the Constitution prescribes a specific mode of legislative involvement.[9] The Executive Branch has never claimed that Congress has no role in treaty termination. Through legislation, Congress may nullify the domestic legal implications of a treaty (*Hooper* v. *United States*, 22 Ct. Cl. 408 (1887)), and through the exercise of its enumerated powers, Congress may effectively make it impossible or impractical for the United States to fulfill its treaty obligations. In the past, Presidents have terminated treaties either for these reasons or because they have agreed with Congress' political determination; on some occasions the President has followed the congressional initiative while on others Congress has supported the President's action.

But petitioners have not pointed to a *single* example of a congressional attempt to veto a Presidential decision to terminate a treaty. None of petitioners' historical precedents bears on the proposition fundamental to this case: that the United States

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[9] See *Treaty Termination Hearings, supra*, at 157-191; Pet. App. 167a-171a. In 1936, Green Hackworth, Legal Adviser of the Department of State, reported:

> In some cases treaties have been terminated by the President, in accordance with their terms, pursuant to action by the Congress. In other cases action was taken by the President pursuant to resolutions of the Senate alone. In still others the initiative was taken by the President, in some cases independently, and in others his action was later notified to one or both Houses of Congress and approved by both Houses. No settled rule or procedure has been followed.

V G. Hackworth, *Digest of International Law* 327 (1943).

cannot maintain treaty relations without the continuing concurrence of the President. The only relevant historical precedents are the instances of unilateral Presidential treaty terminations. While petitioners attempt to distinguish these instances from the present case on grounds such as changed circumstances, ineffectuality, or impossibility of performance, they do not explain why the Constitution gives the President, acting alone, the power to terminate treaties in some circumstances, but not in others, nor do they explain by what standards a court is to determine what the crucial circumstances are.

Construed most favorably to petitioners, the historical record demonstrates only that Presidents have long acknowledged their practical and political dependence on congressional acquiescence or concurrence as a prerequisite for the successful maintenance of a treaty obligation. Past practice also shows that the President and Congress have often reached political accommodations to terminate treaties. The most important lesson of the past, however, is the one that is dispositive here: treaty obligations cannot survive, and have never survived, a President's decision to terminate.

4. In addition to the correctness and limited nature of the court of appeals' decision, and the practical problems associated with further review within the relevant time frame, there are two jurisdictional grounds on which petitioners' request for a writ of certiorari should be denied. Without institutional support for their position, petitioners lack stand-

ing to pursue this litigation. Furthermore, their complaint presents a nonjusticiable political question.

a. The concurring opinion of Chief Judge Wright and Judge Tamm properly concludes that individual Senators and Representatives, acting without institutional support or authority, lack standing to seek a binding judicial declaration of the respective constitutional powers of the President and Congress. Before the decision in this case, the federal courts had permitted individual members to assert the institutional prerogatives of the legislature only if the plaintiffs could point to a recent vote that would have had objective legal effect but for the challenged actions of the defendant,[10] or if they obtained passage of a resolution that authorized them to sue on behalf of their colleagues.[11] Absent such a showing of institutional support for his position, a legislator is simply a citizen seeking to use the court "as a forum in which to air his generalized grievances about the conduct of government or the allocation of power in the Federal System." *United States* v. *Richardson,* 418 U.S. 166, 173 (1974), *quoting Flast* v. *Cohen,* 392 U.S. 83, 106 (1968).

Petitioners nonetheless claim that they can properly litigate the question of the constitutional alloca-

[10] *Coleman* v. *Miller,* 307 U.S. 433 (1939); *Kennedy* v. *Sampson,* 511 F.2d 430 (D.C. Cir. 1974).

[11] *United States* v. *American Telephone and Telegraph,* 551 F.2d 384 (D.C. Cir. 1976); *Senate Select Committee on Presidential Campaign Activities* v. *Nixon,* 498 F.2d 725 (D.C. Cir. 1974).

tion of power in this case because the President's action impaired their interest in voting on the treaty termination question in the most effective possible fashion.[12] The majority of the judges that participated in the court of appeals' decision found this allegation sufficient to confer standing. They explained that "courts consistently vindicate the right to vote without first demanding that the votes when cast will achieve their intended end" (Pet. App. 14a). In this regard, the majority has apparently attempted to draw support from decisions on behalf of persons seeking to vindicate their right to vote in a general election. See, *e.g., Baker* v. *Carr,* 369 U.S. 186 (1962). In such cases, the plaintiff seeks to vindicate a right that is personal to him as a citizen. An individual Senator or Representative who asserts the right to cast a vote on the floor of Congress finds himself in a significantly different position. The right to cast that kind of vote attaches to his office. It is not personal to him. To vindicate his right to cast a symbolic, minority vote on a particular issue regardless of whether the institution as a whole wishes formally to consider that issue would require the courts "to manage the calendar of the United States Senate" (Pet. App. 42a; Wright, C.J., concurring).

[12] The President has not deprived petitioners of an opportunity to vote on the termination question. They have always been free to introduce whatever bills and resolutions they deem appropriate. Indeed, several such resolutions were introduced. The fact that none of them ever came to a final vote is attributable to the actions of other Senators and not to the conduct of the President (Pet. App. 38a-42a; Wright, C.J., concurring).

b. Petitioners' complaint also poses a nonjusticiable political question. The Constitution provides no judicially manageable standards by which a court could grant petitioners' requested relief. *Baker* v. *Carr*, *supra*, 369 U.S. at 217. No constitutional guidance exists for determining whether both Houses of Congress, or solely the Senate, must participate in treaty termination, or whether two-thirds, a majority, or even one-third of the Senate (which could have initially blocked the treaty) are needed to terminate a treaty. Similarly, no standards exist for distinguishing between treaties based on their substance or importance; such distinctions are difficult to ascertain, involve insuperable evidentiary problems, and would inevitably involve a court in making fundamental decisions of foreign policy requiring resolution of disputes between the Executive and Legislative Branches (Pet. App. 26a).[13]

Second, petitioner's complaint with respect to this Treaty presents questions that "uniquely demand single-voiced statement of the Government's views." *Baker* v. *Carr*, *supra*, 369 U.S. at 211. Continued normalized relations with the PRC depend on termination of the Mutual Defense Treaty. For a court now to reinstate that Treaty, or even to cast doubt on

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[13] By ruling in the President's favor on the merits, the court of appeals avoided these problems. While Judge MacKinnon's dissent purports to find a clear constitutional rule that the participation of *both* Houses of Congress is required before a treaty can be terminated, his reasoning is belied by the Treaty Clause itself, which confines participation in the treaty-making process to the Senate.

the effectiveness of the President's termination, would seriously jeopardize the success of the several recent and impending mutually-beneficial agreements between the United States and the PRC.

Finally, as the court of appeals observed (Pet. App. 30a-31a), Congress has ample means within the political process to assert and implement its view on a particular proposed treaty termination. Congress' Article I powers to regulate foreign commerce, raise and support armies and navies, declare war, levy and collect taxes, and spend public funds for the general welfare give it a formidable arsenal of weapons in dealing with the President on questions of foreign policy or in frustrating Presidential initiatives with which a majority of both Houses disagree.

In view of nearly 200 years of successful accommodation and compromise between the political branches of the government regarding the treaty termination process, the courts should decline petitioners' invitation to designate a single constitutionally acceptable method of treaty termination that must be employed in all circumstances. Such judicial intervention would eliminate the flexibility intended by the Framers for our constitutional scheme and, as a consequence, would detract substantially from the efficient and effective conduct of American foreign policy.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

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DECEMBER 1979

APPENDIX

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 78-2412

SENATOR BARRY GOLDWATER, ET AL., PLAINTIFFS

v.

JAMES EARL CARTER, ET AL., DEFENDANTS

DECLARATION OF WARREN CHRISTOPHER

1. I am the Deputy Secretary of State and have held that office since February 26, 1977. In that capacity I am responsible for the implementation of United States foreign policy, subject to the direction of the President and the Secretary of State. I participated in the development of United States policy for the negotiations with the People's Republic of China (P.R.C.) which led to the decision by our two governments to recognize one another. In so doing I became familiar with the issues concerning the status of Taiwan which required resolution before recognition could be achieved.

2. After establishment of the People's Republic of China in 1949, the "Nationalist" government withdrew to the island of Taiwan and a few other islands off the coast of China. The United States continued to recognize the Nationalist government on Taiwan as the sole legitimate government of China. The rising

tensions of the "Cold War" and the hostilities in Korea heightened U.S. concern for the security of Taiwan, leading to the conclusion of the Mutual Defense Treaty with the Government of the Republic of China on Taiwan in 1954 (the "Mutual Defense Treaty").

3. For nearly thirty years the United States had no diplomatic or other regular relationships with the P.R.C. Today over 100 nations recognize the P.R.C. as the Government of China, including all of our NATO and ANZUS allies, and Japan. In each case official relationships with Taiwan have been terminated. The United Nations admitted P.R.C. delegates as the legal representatives of China in 1971.

4. Commencing with President Nixon's trip to China in 1972, which produced the Shanghai Communique, three American Presidents have worked towards diplomatic relations with China. In order to achieve this goal, the United States and the P.R.C. had to remove the longstanding barrier to reconciliation raised by the Mutual Defense Treaty. The P.R.C. made it clear that continuation of the Treaty was incompatible with normalization of relations and that without its termination, normalization was impossible. The P.R.C. sought an immediate abrogation of the Treaty, but the United States insisted that the Treaty instead be terminated according to its provisions. Having reached agreement on this issue, the leaders of the two countries issued a Joint Communique on December 15, 1978, announcing their agreement to establish diplomatic relations as of January

1, 1979. On December 23, 1978, the United States, acting pursuant to Article X of the Mutual Defense Treaty, gave notice of termination of the Treaty to the Taiwan authorities.

For ease of reference, I have attached as Exhibit 1 the 1972 Shanghai Communique, and as Exhibit 2 the 1978 Joint Communique.

5. It is anticipated that diplomatic relations with the P.R.C. will enhance the well-being of the United States. Official ties will facilitate settlement of outstanding U.S. claims against China and access to a major new market for United States agricultural and industrial products. American farmers and businessmen will be able to compete in that market on an equal basis with their Japanese and European competitors. Similarly, normalization will lead to intensified communication between the American people and the nearly one billion Chinese in the areas of culture, science, and technology, and it sets the stage for the provision of full consular, commercial and other services to Americans in China. Cooperation agreements between our two governments have already been concluded in several areas, including science and technology, cultural affairs, education, agriculture, space, and high energy physics. A consular agreement has also been signed. We are now planning to conclude agreements on claims, trade, aviation, and shipping.

6. At the same time, the United States intends to maintain cultural, commercial and other relations with the people on Taiwan, on an unofficial basis.

The President announced on December 30, 1978, that existing international agreements and arrangements between the United States and Taiwan will continue in force, except the Mutual Defense Treaty which will terminate as of January 1, 1980. 44 F.R. No. 3, January 4, 1979.

The continuation of programs on an unofficial basis will insure a close American relationship with the people on Taiwan. The United States will continue to supply selected defensive military equipment to Taiwan after termination of the Treaty, and will provide follow-on support for U.S. miliary equipment previously transferred. Cultural, commercial and other relations between the people of the United States and the people on Taiwan will be facilitated through a non-profit corporation called the American Institute in Taiwan, with headquarters in Washington and offices in Taiwan.

7. In my judgment a court order interfering with the President's action to terminate the Mutual Defense Treaty would seriously damage the President's capacity to speak and act for the United States in the conduct of its foreign relations, and would disrupt the process of normalization of relations with the People's Republic of China to the detriment of the national interest of the United States. Should the Court hold that the notice of termination of the Mutual Defense Treaty is not valid, it is unlikely that the P.R.C. would move forward with the normalization process, including the signing of agreements, the exchange of ambassadors, the establishment of em-

bassies and consulates, the development of trade, and all of the manifold relationships involved in the establishment of official ties between the two nations.

While all of the consequences of a ruling for the plaintiffs in this case cannot be predicted, it would at a minimum be a serious setback in United States relations with China that could have far-reaching and long lasting consequences.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Warren Christopher
WARREN CHRISTOPHER

Executed on 2-23-79
Department of State,
Washington.

EXHIBIT 1

Text of U.S.-People's Republic of China Communique Issued at Shanghai, February 27, 1972

President Richard Nixon of the United States of America visited the People's Republic of China at the invitation of Premier Chou En-lai of the People's Republic of China from February 21 to February 28, 1972. Accompanying the President were Mrs. Nixon, U.S. Secretary of State William Rogers, Assistant to the President Dr. Henry Kissinger, and other American officials.

President Nixon met with Chairman Mao Tse-tung of the Communist Party of China on February 21. The two leaders had a serious and frank exchange of views on Sino-U.S. relations and world affairs.

During the visit, extensive, earnest and frank discussions were held between President Nixon and Premier Chou-En-lai on the normalization of relations between the United States of America and the People's Republic of China, as well as on other matters of interest to both sides. In addition, Secretary of State William Rogers and Foreign Minister Chi Peng-fei held talks in the same spirit.

President Nixon and his party visited Peking and viewed cultural, industrial and agricultural sites, and they also toured Hangchow and Shanghai where, continuing discussions with Chinese leaders, they viewed similar places of interest.

The leaders of the Republic of China and the United States of America found it beneficial to have this

opportunity, after so many years without contact, to present candidly to one another their views on a variety of issues. They reviewed the international situation in which important changes and great upheavals are taking place and expounded their respective positions and attitudes.

The U.S. side stated: Peace in Asia and peace in the world requires efforts both to reduce immediate tensions and to eliminate the basic causes of conflict. The United States will work for a just and secure peace: just, because it fulfills the aspirations of peoples and nations for freedom and progress; secure, because it removes the danger of foreign aggression. The United States supports individual freedom and social progress for all the peoples of the world, free of outside pressure or intervention. The United States believes that the effort to reduce tensions is served by improving communication between countries that have different ideologies so as to lessen the risks of confrontation through accident, miscalculation or misunderstanding. Countries should treat each other with mutual respect and be willing to compete peacefully, letting performance be the ultimate judge. No country should claim infallibility and each country should be prepared to re-examine its own attitudes for the common good. The United States stressed that the peoples of Indochina should be allowed to determine their destiny without outside intervention; its constant primary objective has been a negotiated solution; the eight-point proposal put forward by the Republic of Vietnam and the United

States on January 27, 1972 represents a basis for the attainment of that objective; in the absence of a negotiated settlement the United States envisages the ultimate withdrawal of all U.S. forces from the region consistent with the aim of self-determination for each country of Indochina. The United States will maintain its close ties with and support for the Republic of Korea; the United States will support efforts of the Republic of Korea to seek a relaxation of tension and increased communication in the Korean peninsula. The United States places the highest value on its friendly relations with Japan; it will continue to develop the existing close bonds. Consistent with the United Nations Security Council Resolution of December 21, 1971, the United States favors the continuation of the ceasefire between India and Pakistan and the withdrawal of all military forces to within their own territories and to their own sides of the ceasefire line in Jammu and Kashmir; the United States supports the right of the peoples of South Asia to shape their own future in peace, free of military threat, and without having the area become the subject of great power rivalry.

The Chinese side stated: Wherever there is oppression, there is resistance. Countries want independence, nations want liberation and the people want revolution—this has become the irresistible trend of history. All nations, big or small, should be equal; big nations should not bully the small and strong nations should not bully the weak. China will never be a superpower and it opposes hegemony and power

politics of any kind. The Chinese side stated that it firmly supports the struggles of all the oppressed people and nations for freedom and liberation and that the people of all countries have the right to choose their social systems according to their own wishes and the right to safeguard the independence, sovereignty and territorial integrity of their own countries and oppose foreign aggression, interference, control and subversion. All foreign troops should be withdrawn to their own countries.

The Chinese side expressed its firm support to the peoples of Vietnam, Laos and Cambodia in their efforts for the attainment of their goal and its firm support to the seven-point proposal of the Provisional Revolutionary Government of the Republic of South Vietnam and the elaboration of February this year on the two key problems in the proposal, and to the Joint Declaration of the Summit Conference of the Indochinese Peoples. It firmly supports the eight-point program for the peaceful unification of Korea put forward by the Government of the Democratic People's Republic of Korea on April 12, 1971, and the stand for the abolition of the "U.N. Commission for the Unification and Rehabilitation of Korea." It firmly opposes the revival and outward expansion of Japanese militarism and firmly supports the Japanese people's desire to build an independent, democratic, peaceful and neutral Japan. It firmly maintains that India and Pakistan should, in accordance with the United Nations resolutions on the India-Pakistan question, immediately withdraw all their forces to

their respective territories and to their own sides of the ceasefire line in Jammu and Kashmir and firmly supports the Pakistan Government and people in their struggle to preserve their independence and sovereignty and the people of Jammu and Kashmir in their struggle for the right of self-determination.

There are essential differences between China and the United States in their social systems and foreign policies. However, the two sides agreed that countries, regardless of their social systems, should conduct their relations on the principles of respect for the sovereignty and territorial integrity of all states, non-aggression against other states, non-interference in the internal affairs of other states, equality and mutual benefit, and peaceful coexistence. International disputes should be settled on this basis, without resorting to the use or threat of force. The United States and the People's Republic of China are prepared to apply these principles to their mutual relations.

With these principles of international relations in mind the two sides stated that:

—progress toward the normalization of relations between China and the United States is in the interests of all countries;

—both wish to reduce the danger of international military conflict;

—neither should seek hegemony in the Asia-Pacific region and each is opposed to efforts by any other country or group of countries to establish such hegemony; and

—neither is prepared to negotiate on behalf of any third party or to enter into agreements or understandings with the other directed at other states.

Both sides are of the view that it would be against the interests of the peoples of the world for any major country to collude with another against other countries, or for major countries to divide up the world into spheres of interest.

The two sides reviewed the long-standing serious disputes between China and the United States. The Chinese side reaffirmed its position: The Taiwan question is the crucial question obstructing the normalization of relations between China and the United States; the Government of the People's Republic of China is the sole legal government of China; Taiwan is a province of China which has long been returned to the motherland; the liberation of Taiwan is China's internal affair in which no other country has the right to interfere; and all U.S. forces and military installations must be withdrawn from Taiwan. The Chinese Government firmly opposes any activities which aim at the creation of "one China, one Taiwan," "one China, two governments," "two Chinas," and "independent Taiwan" or advocate that "the status of Taiwan remains to be determined."

The U.S. side declared: The United States acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China. The United States Government does not challenge that position. It re-

affirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves. With this prospect in mind, it affirms the ultimate objective of the withdrawal of all U.S. forces and military installations from Taiwan. In the meantime, it will progressively reduce its forces and military installations on Taiwan as the tension in the area diminishes.

The two sides agreed that it is desirable to broaden the understanding between the two peoples. To this end, they discussed specific areas in such fields as science, technology, culture, sports and journalism, in which people-to-people contacts and exchanges would be mutually beneficial. Each side undertakes to facilitate the further development of such contacts and exchanges.

Both sides view bilateral trade as another area from which mutual benefit can be derived, and agreed that economic relations based on equality and mutual benefit are in the interest of the peoples of the two countries. They agree to facilitate the progressive development of trade between their two countries.

The two sides agreed that they will stay in contact through various channels, including the sending of a senior U.S. representative to Peking from time to time for concrete consultations to further the normalization of relations between the two countries and continue to exchange views on issues of common interest.

The two sides expressed the hope that the gains achieved during this visit would open up new prospects for the relations between the two countries.

They believe that the normalization of relations between the two countries is not only in the interest of the Chinese and American peoples but also contributes to the relaxation of tension in Asia and the world.

President Nixon, Mrs. Nixon and the American party expressed their appreciation for the gracious hospitality shown them by the Government and people of the People's Republic of China.

EXHIBIT 2

JOINT COMMUNIQUE ON THE ESTABLISHMENT OF DIPLOMATIC RELATIONS BETWEEN THE UNITED STATES OF AMERICA AND THE PEOPLE'S REPUBLIC OF CHINA JANUARY 1, 1979

The United States of America and the People's Republic of China have agreed to recognize each other and to establish diplomatic relations as of January 1, 1979.

The United States of America recognizes the Government of the People's Republic of China as the sole legal Government of China. Within this context, the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan.

The United States of America and the People's Republic of China reaffirm the principles agreed on by the two sides in the Shanghai Communique and emphasize once again that:

—Both wish to reduce the danger of international military conflict.

—Neither should seek hegemony in the Asia-Pacific region or in any other region of the world and each is opposed to efforts by any other country or group of countries to establish such hegemony.

—Neither is prepared to negotiate on behalf of any third party or to enter into agreements

or understandings with the other directed at other states.

—The Government of the United States of America acknowledges the Chinese position that there is but one China and Taiwan is part of China.

—Both believe that normalization of Sino-American relations is not only in the interest of the Chinese and American peoples but also contributes to the cause of peace in Asia and the world.

The United States of America and the People's Republic of China will exchange Ambassadors and establish Embassies on March 1, 1979.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

D.D.C. Civil Action No. 78-2412

SENATOR BARRY GOLDWATER, ET AL., APPELLEES

v.

JAMES EARL CARTER, ET AL., APPELLANTS

DELCARATION OF WARREN CHRISTOPHER

1. I am the Deputy Secretary of State and have held that office since February 26, 1977. In that capacity I am responsible for the implementation of United States foreign policy, subject to the direction of the President and the Secretary of State, including United States relations with the People's Republic of China (PRC). This Declaration is made to supplement my Declaration in the District Court of February 23, 1979,* and the statements in it are based on my personal knowledge.

2. On October 17, Judge Oliver Gasch issued an opinion declaring that the President's notice of December 23, 1978, is not effective to terminate the 1954 Mutual Defense Treaty with the authorities on Taiwan without further action by the Senate or the Congress. The Treaty is scheduled to terminate on December 31, 1979. In my judgment, Judge Gasch's opinion, unless promptly reversed, would

* Attached to defendants' Motion to Dismiss or, in the alternative, for Summary Judgment filed on February 26, 1979.

have an adverse effect on the developing relationship between the United States and the PRC and cause serious damage to United States foreign relations interests.

3. The decision of the United States and the PRC in late 1978 to normalize relations between the two powers was based on a carefully balanced agreement negotiated with considerable difficulty over a period of several years following the visits of Secretary Kissinger and President Nixon to China in 1972. The PRC firmly maintained that termination of the 1954 defense treaty was a fundamental precondition for normalization. The United States accepted that position because it agreed that maintenance of that Treaty relationship would be incompatible with United States recognition of the PRC as the sole legal government of China and with the attendant derecognition of the authorities on Taiwan. At the same time, the United States maintained with equal vigor the right to maintain unofficial but close commercial, cultural, scientific and technological ties with Taiwan. In addition the United States made clear its continued interest in the peaceful resolution of the Taiwan issue and its right to continue to supply Taiwan with carefully chosen defensive military equipment as well as follow-up support for previous arms transfers after the defense treaty is terminated. Normalization would not have proceeded on any other basis.

4. The United States established diplomatic relations with the People's Republic of China and terminated the Mutual Defense Treaty according to its

own terms in order to obtain the benefits of normalization for the American people. As a direct result of normalization, China and the United States have established embassies and consulates on each other's territory. We have concluded an agreement settling long-outstanding property claims of U.S. nationals against China. The two parties have recently signed a trade agreement which, upon approval by Congress, will open a major new market for U.S. industry and agriculture. To support American business competition in this market, China and the United States have agreed in principle on the extension of $2 billion in U.S. Export-Import Bank credit and on Overseas Private Investment Corporation guarantees. Detailed discussions on these matters will begin shortly.

The new opportunity for intergovernmental consultation on matters of common concern has led to the visit of the Vice President and numerous members of the cabinet to China, and visits by China's Vice Premier and ministers of the Chinese Government to the United States. Chinese Premier Hua Guofeng is scheduled to visit the United States early next year, and President Carter has accepted an invitation to travel to China after Premier Hua's visit. Cooperation agreements have already been concluded in several fields, including hydro-electric power, science and technology, cultural affairs, and education; and important new cooperative arrangements, including a consular treaty, as well as aviation and shipping agreements, are under active

negotiation. At least 40,000 Americans have visited China so far this year.

5. A normalized political relationship with the PRC is of great significance to the strategic interest of the United States in achieving a careful balance of relationships in Asia and in the world. We have been encouraged at the easing of tensions between the PRC and United States allies in East Asia. Continued reapproachment between our two nations is the best assurance of a peaceful resolution of the Taiwan issue that protects the interests of Taiwan's poeple as well as our flourishing cultural and commercial relationship with them. Since normalization, two-way U.S. trade with Taiwan has continued to develop, increasing to an estimated $10 billion in 1979.

6. There can be no doubt that the opinion of the District Court, holding the President's notice of termination ineffective without further Congressional action, is inconsistent with a basic tenet of the United States agreement with the PRC on normalization of relations. Unless that opinion is reversed without delay, there is the risk that the PRC will feel obliged to reconsider the entire relationship and a reversal of steps already taken is a distinct possibility. If this situation is not finally resolved in advance of December 31, the consequences could be serious indeed, and of long lasting disadvantage to the United States.

7. In my considered judgment, it is essential that this matter be resolved as soon as possible to dispel doubts in the PRC concerning the reliability of the

President's commitments and to remove a serious cloud now hanging over the normalization of relations between the United States and China.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Warren Christopher
WARREN CHRISTOPHER

Executed on October 18, 1979
Department of State,
Washington.

AGREEMENTS CONCLUDED BETWEEN THE UNITED STATES AND THE PEOPLE'S REPUBLIC OF CHINA

Agreement concerning the settlement of claims. Signed at Beijing May 11, 1979; entered into force May 11, 1979. TIAS 9306.

Agreement on the mutual establishment of consular relations and the opening of consulates general, with annex. Signed at Washington January 31, 1979; entered into force January 31, 1979. TIAS 9177.

Cultural agreement. Signed at Washington January 31, 1979; entered into force January 31, 1979. TIAS 9178.

Agreement relating to an educational exchange program in scientific and scholarly fields. Concluded at Washington October 20, 1978; entered into force October 20, 1978 (incorporated into January 31, 1979 agreement).

Agreement on cooperation in science and technology, with exchange of letters. Signed at Washington January 31, 1979; entered into force January 31, 1979. TIAS 9179.

Agreement on trade exhibitions. Signed at Beijing May 10, 1979; entered into force May 10, 1979. TIAS 9470.

Agreement on trade relations. Signed at Beijing July 7, 1979; enters into force on the date the contracting parties exchange notifications that each has completed the legal procedures necessary for entry into force.

Agreements implementing the agreement of January 31, 1979 on cooperation in science and technology:

Implementing accord on cooperation in the field of high energy physics. Signed at Washington January 31, 1979.

Annex to implement accord on cooperation in the field of high energy physics. Signed at Beijing June 12, 1979.

Cooperative program in high energy physics for June 1979 - June 1980. Signed at Beijing June 12, 1979.

Protocol on cooperation in the fields of atmospheric science and technology, with annexes. Signed at Beijing May 8, 1979.

Protocol on cooperation in the field of marine and fishery science and technology with annex. Signed at Beijing May 8, 1979.

Protocol on cooperation in the fields of metrology and standards, with annex. Signed at Beijing May 8, 1979.

Protocol on cooperation in the fields of management of science and technology and scientific and technical information, with annex. Signed at Beijing May 8, 1979.

Protocol for cooperation in the science and technology of medicine and public health. Signed at Beijing June 22, 1979.

Protocol on cooperation in hydroelectric power and related water resource management. Signed at Beijing August 28, 1979.

(All of the implementing agreements entered into force upon signature.)

☆ U. S. GOVERNMENT PRINTING OFFICE: 1979 306794 158